

House Bill 1118 (AS PASSED HOUSE AND SENATE)

By: Representatives Weldon of the 3<sup>rd</sup>, Willard of the 49<sup>th</sup>, Allison of the 8<sup>th</sup>, Loudermilk of the 14<sup>th</sup>, Lane of the 167<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the Child Support Recovery Act, so as to change provisions relating to review procedures for IV-D agency support orders; to provide for definitions; to clarify terms regarding IV-D agency obligors and obligees who provide or receive accident and sickness insurance for children; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the Child Support Recovery Act, is amended by revising Code Section 19-11-3, relating to definitions, as follows:

"19-11-3.

As used in this article, the term:

(1) 'Court order for child support' means any order for child support issued by a court or administrative or quasi-judicial entity of this state or another state, including an order in a criminal proceeding which results in the payment of child support as a condition of probation or otherwise. Such order shall be deemed to be a IV-D order for purposes of this article when either party to the order submits a copy of the order for support and a signed application to the department for IV-D services, when the right to child support has been assigned to the department pursuant to subsection (a) of Code Section 19-11-6, or upon registration of a foreign order pursuant to Article 3 of this chapter.

(2) 'Department' means the Department of Human Services.

(3) 'Dependent child' means any person under the age of 18 who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(4) 'Duty of support' means any duty of support imposed or imposable by law or by court order, decree, or judgment.

(5) 'IV-D' means Title IV-D of the federal Social Security Act.

(6) 'IV-D agency' means the Child Support Enforcement Agency of the Department of Human Services and its contractors.

(7) 'Medical insurance obligee' means any person to whom a duty of medical support is owed.

(8) 'Medical insurance obligor' means any person owing a duty of medical support.

~~(7)~~(9) 'Parent' means the natural or adoptive parents of a child and includes the father of a child born out of wedlock if his paternity has been established in a judicial proceeding or if he has acknowledged paternity under oath either in open court, in an administrative hearing, or by verified writing."

## SECTION 2.

Said article is further amended by Code Section 19-11-12, relating to the determination of ability to support, review procedures, and orders adjusting support award amounts, as follows:

"19-11-12.

(a) The IV-D agency shall ~~determine the ability of the noncustodial parent to support his or her child or children~~ review orders for child support in accordance with the guidelines prescribed in Code Section 19-6-15.

(b)(1) The IV-D agency shall periodically give notice to the obligor and obligee who are subject to a IV-D court order for child support, ~~as defined in paragraph (1) of Code Section 19-11-3~~, of the right of each to request a review of the order by the IV-D agency for possible recommendation for adjustment of such order. Such notification should be provided within 36 months after the establishment of the order or the most recent review; however, failure to provide the notice within 36 months shall not affect the right of either party to request, in writing, a review nor the right of the IV-D agency to conduct a review and to recommend an adjustment to the order. ~~The~~ Such notice ~~can~~ may be included in the initial order or review recommendation.

(2) The establishment of a child support order or the entry of an order to modify a child support order or a determination of no change to a child support order under this Code section shall commence a 36 month cycle, the purpose of which is to provide the parties the right to a review of the order at least every 36 months or in such shorter cycle as the IV-D agency may determine. The failure of either party to request a review at least once every 36 months shall not affect the right of either party to request a review nor the right

of the IV-D agency to conduct a review and to recommend an adjustment to the order at any time beyond the 36 month cycle.

~~(c)(1) The IV-D agency shall review IV-D court orders for child support, as defined in paragraph (1) of Code Section 19-11-3, for possible modification under this chapter. The review shall be performed upon the written request of either the obligor or obligee, or, if there is an assignment under subsection (a) of Code Section 19-11-6, upon the request of the IV-D agency or of the obligor or obligee. Exceptions to this procedure are cases where the IV-D agency determines that such a review would not be in the best interest of the child or children involved.~~ All IV-D agency orders that are active TANF cases shall be reviewed under this Code section following the expiration of the thirty-sixth month after the order was issued, without a request from the obligor or obligee. All other orders for support being enforced by a IV-D agency shall be eligible for review pursuant to this Code section upon application and payment of fees required by the IV-D agency at the completion of the review.

(2) If the request for the review occurs less than 36 months since the last issuance or last review of the order, the IV-D agency shall review, and if the requesting party demonstrates a substantial change in circumstances, seek to modify the order in accordance with the guidelines as provided by paragraph (2) of subsection (d) of this Code section.

(3) If the request for the review occurs at least 36 months after the last issuance or last review, the requesting party shall not be required to demonstrate a substantial change in circumstances, the need for additional support, or that the needs of the child have decreased. The sole basis for a recommendation for a change in the award of support under this paragraph shall be a significant inconsistency between the existing child support order and the amount of child support which would result from the application of Code Section 19-6-15.

(d)(1) The IV-D agency shall notify the obligor and obligee at least 30 days before the commencement of a review of a child support order.

(2) The IV-D agency shall review and, if there is a significant inconsistency between the amount of the existing child support order and the amount of child support which would result from the application of Code Section 19-6-15, the agency shall make a recommendation for an increase or decrease in the amount of an existing order for support. The IV-D agency shall not be deemed to be representing either the obligee or obligor in a proceeding under this Code section.

(3) Upon completion of a review, the IV-D agency shall send notice by first-class mail to the obligor and obligee at their last known addresses of a proposed adjustment or a determination that there should be no change in the child support award amount. ~~Each~~

98 ~~party shall have 30 days from the date of the notice to object in writing to the IV-D~~  
99 ~~agency's proposed adjustment or determination of no change.~~

100 (4)(A) In the case of an administrative order, the agency shall request the  
101 administrative law judge to increase or decrease the amount in the existing order in  
102 accordance with the agency recommendation. If either the obligor or the obligee files  
103 with the agency ~~within 30 days~~ written objections to the agency's proposed child  
104 support order adjustment ~~to the child support order~~ or determination of no change to the  
105 child support order within 33 days of the mailed notice, the matter shall be scheduled  
106 for an administrative hearing within the Office of State Administrative Hearings. The  
107 administrative order adjusting the child support award amount which results from a  
108 hearing or the failure to object to the agency's proposed adjustment or determination of  
109 no change shall, upon filing with the local clerk of the court, have the full effect of a  
110 modification of the original order or decree of support. As part of the order adjusting  
111 the child support award the administrative law judge shall issue an income and earnings  
112 deduction order which shall also be filed with the court pursuant to Code Sections  
113 19-6-30 through 19-6-33.

114 (B) In the case of a judicial order, the agency shall file a petition asking the court to  
115 adopt the agency's ~~recommendation for an increase or decrease in the amount in the~~  
116 ~~existing order~~ proposed adjustment or determination of no change to the child support  
117 order which shall be filed contemporaneously with the agency's mailed notice and shall  
118 serve such petition upon the obligor and obligee in the manner provided in subsection  
119 (e) of Code Section 9-11-4. Upon the filing of a written objection to the agency's  
120 proposed adjustment or determination of no change with the clerk of the superior court  
121 and with the agency, a de novo proceeding shall be scheduled with the court on the  
122 matter. If neither party files an objection ~~within the 30 day notice period~~ days from the  
123 service of the petition, the court shall issue an order adopting the recommendation of  
124 the IV-D agency. As part of the order adjusting the child support award, the court shall  
125 issue an income and earnings deduction order pursuant to Code Sections 19-6-30  
126 through 19-6-33.

127 (e) When the trier of fact, the administrative law judge for administrative orders, or a judge  
128 of the superior court for court orders, as the case may be, determines that there is a  
129 significant inconsistency between the existing child support order and the amount of child  
130 support which would result from the application of Code Section 19-6-15, the trier of fact  
131 may use this inconsistency as the basis to increase or decrease the amount of support  
132 ordered. The trier of fact may also address the repayment of any arrears accumulated under  
133 the existing order.

(f) An obligor shall not be relieved of his or her duty to provide support when such obligor has brought about his or her own unstable financial condition by voluntarily incurring subsequent obligations.

(g) The department shall be authorized to promulgate rules and regulations to implement the provisions of this Code section."

### SECTION 3.

Said article is further amended by revising subsections (a) through (c) of Code Section 19-11-26, relating to accident and sickness insurance coverage for children, as follows:

"(a) In all cases involving the assignment and collection of child support, or where medical assistance benefits are being provided, the department or court may determine, as a regular part of its investigation and inquiry, whether accident and sickness coverage for the child or children involved is reasonably available to ~~an obligor of support~~ a party to a court order at a reasonable cost in connection with the ~~obligor's party's~~ employment or union. For purposes of this article, the term 'person or entity providing access to coverage' shall mean an employer or union which offers a group insurance plan, as defined in Section 607(b) of the federal Employee Retirement Income Security Act of 1974, a health maintenance organization or a service benefit plan, or any other policy of health insurance under Title 33. If it is determined that such coverage is reasonably available in connection with the medical insurance obligor's employment or union, the department is authorized to petition for modification of any existing order of support to include the provision of such coverage, to intervene in any pending action to have such coverage included, or to include the request for such coverage in any action brought by the department.

(b) Upon petition by the department to have accident and sickness insurance coverage included, any court or administrative hearing officer having jurisdiction over the matter may include the provision of medical support in any order of support it may enter, if such medical support is found to be available to the medical insurance obligor in connection with his or her employment or union at a reasonable cost consistent with subsection (a) of this Code section.

(c) Any order requiring medical support under this Code section shall contain language notifying the ~~support~~ medical insurance obligor that failure to provide accident and sickness insurance coverage may result in direct enforcement of the order. Any order of medical support entered or modified prior to April 1, 1994, shall be construed as a matter of law to contain this notice."

**SECTION 4.**

Said article is further amended by revising Code Section 19-11-27, relating to accident and sickness insurance coverage for children, as follows:

"19-11-27.

(a) Whenever a ~~support obligor~~ party to a court order who is required to maintain accident and sickness insurance fails to provide such coverage as ordered, or allows such coverage to lapse, the department, the Department of Community Health, or the other party may compel the medical insurance obligor to obtain insurance coverage as provided in this Code section. The remedies provided in this Code section shall be in addition to and not in lieu of any other remedies available to the department, the Department of Community Health, or the other party.

(b) The National Medical Support Notice as prescribed under 42 U.S.C. Section 666(a)(19) shall be issued, when appropriate, by the IV-D agency to notify employers and health insurers of an order entered or being enforced by the IV-D agency pursuant to Code Section 19-11-8 and to enforce the accident and sickness coverage provisions of such order. The IV-D agency is not required to issue the National Medical Support Notice in cases where the court or administrative order stipulates alternative accident and sickness coverage that is not employer based.

(c) Upon failure of a ~~support~~ medical insurance obligor to obtain accident and sickness insurance coverage as ordered, or upon the lapse of coverage required to be provided, the department, the Department of Community Health, or the other party may issue and send a notice of enrollment or National Medical Support Notice by certified mail or statutory overnight delivery, return receipt requested, to the person or entity providing access to such coverage on behalf of the medical insurance obligor. The notice shall include a certified copy of the latest order requiring health insurance coverage and the return address of the sender.

(d) In all IV-D cases, the IV-D agency shall notify the medical insurance obligor in writing that the National Medical Support Notice has been sent to the medical insurance obligor's employer or union, and the written notification shall include the medical insurance obligor's rights and duties under the National Medical Support Notice. The medical insurance obligor has the right to contest the withholding required by the National Medical Support Notice based on a mistake of fact. To contest, the medical insurance obligor must file a written notice of contest with the IV-D agency within 15 business days from the date of the National Medical Support Notice. Filing with the IV-D agency shall be deemed complete when the notice is received by the person designated by the IV-D agency in the written notification. Upon the timely filing of a notice of contest, the IV-D agency shall, within five business days, schedule an informal conference with the medical insurance obligor to

discuss the medical insurance obligor's factual dispute. If the informal conference resolves the dispute to the medical insurance obligor's satisfaction, or if the medical insurance obligor fails to attend the informal conference, the notice of contest shall be deemed withdrawn. If the informal conference does not resolve the dispute, the medical insurance obligor has the right to request an administrative hearing before an administrative law judge pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' within five business days after being notified of the results of the review by the IV-D agency. However, neither a request for informal review nor the filing of a notice of contest for an administrative hearing by the medical insurance obligor shall delay the withholding of premium payments by the union, employer, or health plan administrator. The union, employer, or health plan administrator must implement the withholding as directed by the National Medical Support Notice unless notified by the IV-D agency, court, or the Office of Administrative Hearings that the National Medical Support Notice is terminated.

(e) Any person or entity providing access to accident and sickness insurance coverage on behalf of the medical insurance obligor pursuant to a notice of enrollment or National Medical Support Notice shall withhold from the medical insurance obligor's income the amount necessary to pay the premium for the insurance coverage, provided that the amount deducted does not exceed the limitations of Section 303(b) of the federal Consumer Credit Protection Act, as amended.

(f) The department is authorized to adopt rules and regulations to implement the child support enforcement provisions of this Code section that affect IV-D cases.

(g) Upon receipt of a notice of enrollment or National Medical Support Notice:

(1) The employer and plan administrator shall comply with the provisions in the notice;

(2) The employer and plan administrator shall treat the notice as an application for health coverage for the dependent by the person or entity sending the notice to the extent such application is required by the plan;

(3) If the medical insurance obligor named in the notice is not an employee of the employer or if a health benefit plan is not offered or available to the employee, the employer shall notify the person or entity sending the notice, as provided in the notice, within 20 business days after the date of the notice;

(4) If a health benefit plan is offered or available to the employee, the employer shall send the plan administrator's portion of the notice to each appropriate plan administrator within 20 business days after the date of the notice;

(5) Upon notification from the plan administrator that the dependent is enrolled, the employer shall either withhold and transfer the premiums to the plan or notify the person or entity sending the notice that enrollment cannot be completed because of prioritization

or limits on withholding as provided in subsection (e) of this Code section or as provided in the notice;

(6) Upon notification from the plan administrator that the medical insurance obligor is subject to a waiting period that expires more than 90 days from the date of receipt of the notice by the plan administrator, or whose duration is determined by a measure other than the passage of time, the employer shall notify the plan administrator when the medical insurance obligor is eligible to enroll in the plan and that this notice requires enrollment of the dependent named in the notice in the plan;

(7) The plan administrator shall enroll the dependent and if necessary the medical insurance obligor in the plan selected under this paragraph. The plan administrator shall enroll the medical insurance obligor if enrollment of the medical insurance obligor is necessary to enroll the dependent. All the following shall apply in the selection of the plan:

(A) If the medical insurance obligor is enrolled in a health benefit plan that offers dependent coverage, the dependent shall be enrolled in the plan in which the medical insurance obligor is enrolled;

(B) If the medical insurance obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent coverage, and if only one plan with dependent coverage is offered by the employer, that plan shall be selected;

(C) If the medical insurance obligor is not enrolled in a health benefit plan that offers dependent coverage, and if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the IV-D agency, all of the following shall apply:

(i) If only one of the plans is accessible to the dependent, that plan shall be selected. If none of the plans with dependent coverage is accessible to the dependent, the IV-D agency shall amend or terminate the notice;

(ii) If more than one of the plans is accessible to the dependent, the plan selected shall be the plan for basic coverage for which the employee's share of the premium is lowest;

(iii) If more than one of those plans is accessible to the dependent, but none of the accessible plans is for basic coverage, the plan selected shall be an accessible plan for which the employee's share of the premium is the lowest; and

(iv) If the employee's shares of the premiums are the same, the IV-D agency shall consult the medical insurance obligee and select a plan. If the medical insurance obligee does not respond within ten days, the IV-D agency shall select a plan which shall be the plan's default option, if any, or the plan with the lowest deductibles and copayment requirements; and



(D) If the medical insurance obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent coverage, and if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by a IV-D child support enforcement agency of another state, that agency shall select the plan as provided in paragraph (8) of this subsection; and

(8) Within 40 business days after the date of the notice, the plan administrator shall do all of the following as directed in the notice:

(A) Complete the appropriate portion of the notice and return to the person or entity sending the notice;

(B) If the dependent is enrolled or is to be enrolled, notify the medical insurance obligor, the medical insurance obligee, and the child and furnish the medical insurance obligee with necessary information including any necessary claim forms or enrollment membership cards necessary to obtain benefits and provide the person or entity sending the notice with the type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescription drugs are covered services, and with a brief description of the applicable deductibles, coinsurance, waiting period for preexisting medical conditions, and other significant terms or conditions which materially affect the coverage;

(C) If more than one plan is available to the medical insurance obligor and the medical insurance obligor is not enrolled, forward plan descriptions and documents to the person or entity sending the notice and enroll the dependent, and if necessary the medical insurance obligor, in the plan selected by the person or entity sending the notice or any default option if the plan administrator has not received a selection from the person or entity sending the notice within 20 business days of the date the plan administrator returned the National Medical Support Notice response to the person or entity sending the notice;

(D) If the medical insurance obligor is subject to a waiting period that expires more than 90 days from the date the plan administrator received the notice or has not completed a waiting period whose duration is determined by a measure other than the passage of time, notify the employer, the person or entity sending the notice, the medical insurance obligor, and the medical insurance obligee; and upon satisfaction of the period or requirement, complete the enrollment;

(E) Upon completion of the enrollment, notify the employer for a determination of whether the necessary employee share of the premium is available; and

(F) If the plan administrator is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. Section 1169, and the plan administrator determines the notice does not constitute a qualified medical child support order,

complete and send the response to the person or entity sending the notice and notify the medical insurance obligor, the medical insurance obligee, and the child of the specific reason for the determination."

#### SECTION 5.

Said article is further amended by revising subsections (a) through (d) of Code Section 19-11-28, relating to accident and sickness insurance coverage for children, as follows:

"(a) The signature of the medical insurance obligee or an agent of the department shall constitute a valid authorization to any insurer to process benefits and to make payments to a health care provider or the medical insurance obligee in accordance with any accident and sickness insurance policy.

(b) An order of medical support shall operate as an assignment to the ~~support~~ medical insurance obligee of any right to benefits under a policy of accident and sickness coverage maintained by the medical insurance obligor insofar as dependent coverage is available. The ~~support~~ medical insurance obligee shall be subrogated to the rights of the medical insurance obligor to the extent necessary to pursue any claim against the insurer under such policy.

(c) Within ten business days after termination of a policy of accident and sickness insurance established pursuant to Code Section 19-11-27, or the termination of employment of the medical insurance obligor, the person or entity providing access to such coverage on behalf of a ~~support~~ medical insurance obligor shall mail a termination notice to the person or entity which initially sent a notice of enrollment or National Medical Support Notice and provide the medical insurance obligor's last known address and, if known, the address of the medical insurance obligor's new employer.

(d) Any person or entity providing access to accident and sickness coverage on behalf of a ~~support~~ medical insurance obligor shall be immune from any civil or criminal liability while complying in good faith with the provisions of this Code section and Code Section 19-11-27."

#### SECTION 6.

Said article is further amended by revising subsections (a) and (c) of Code Section 19-11-29, relating to accident and sickness insurance coverage for children, as follows:

"(a) Any person or entity providing access to accident and sickness insurance coverage on behalf of a ~~support~~ medical insurance obligor in connection with the medical insurance obligor's employment or union shall be liable for a civil penalty not to exceed \$1,000.00 per occurrence for willful failure to enroll promptly, without regard to enrollment season restrictions, a dependent in an accident and sickness insurance plan under an order of

349 medical support or a notice of enrollment; provided, however, that no liability shall exist  
350 where such person or entity acts in accordance with subsection (g) of Code Section  
351 19-11-27."

352 "(c) Any person or entity providing access to accident and sickness insurance coverage on  
353 behalf of a ~~support~~ medical insurance obligor shall be liable for a civil penalty not to  
354 exceed \$1,000.00 per occurrence for the disenrollment by the ~~employee~~ medical insurance  
355 obligor, or elimination of coverage of the child, unless the ~~employee~~ medical insurance  
356 obligor provides written proof that the child has been enrolled or will be enrolled in  
357 comparable insurance coverage, with the coverage to take effect no later than the effective  
358 date of disenrollment; provided, however, that no liability shall exist where such person or  
359 entity acts in accordance with subsection (d) of Code Section 19-11-26."

360 **SECTION 7.**

361 All laws and parts of laws in conflict with this Act are repealed.